

Remarks

Claims 1-7, 9, 11, and 12 are pending in the subject application. Claims 1 and 11 have been amended.

While the Examiner lists only claims 1-7, 9, and 11 as pending and as being rejected on the “Office Action Summary”, the Applicants notice that the Examiner has addressed claim 12 on pages 2-4 of the “DETAILED ACTION”. Therefore, the Applicants assume that the omission of claim 12 in the “Office Action Summary” was a typographical error.

Double Patenting:

The Examiner has indicated that “should claim 1 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof.”

Applicants acknowledge the Examiner’s objection. If a proper double patenting rejection is maintained until one or both of the involved claims becomes final, or until the double patenting objection is the only objection remaining relative to the two claims, Applicants will cancel one of the objected to claims.

Claim Rejections – 35 USC §112:

Claims 1-7, 9, 11-12 are rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. The Examiner states that “[t]he claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, has possession of the claimed invention.” More specifically, the Examiner states that “[n]o clear discussion is given of what is intended by the vague term ‘to overcome a dead center on the body frame.’”

The Applicants have amended claim 1 to recite, in part, “to overcome a dead center in the convertible top’s (1) motion toward the body frame part (4).” Likewise, the Applicants have amended claim 11 to recite, in part, “overcoming a dead center of the convertible top’s motion toward the body frame part (4), until a catching position is achieved.” Support for these amendments can at least be found in paragraph [0036] of the application, as filed. The Applicants submit that the term “dead center” is a recognized term of art. More specifically, an article titled “Finding Dead-Point Positions of Planar Pin-Connected Linkages Through

Graph Theoretical Duality Principle” from the May 2006, Vol. 128 Journal of Mechanical Design is provided with the enclosed information disclosure statement as evidence of the recognition and usage of the terminology. As stated in the first paragraph of the article, “[d]ead-point position of a linkage is such a geometrical configuration at which the linkage loses its mobility. In the field of machine design it is important to be aware of the possible dead-point configurations of the given planar linkage, as in some cases such configurations constitute an undesirable obstacle for the valid operation of the linkage, while in other cases they constitute a part of the linkage functionality.” [Emphasis added]. In claims 1 and 11 of the present application, loss of mobility by way of the dead center position is a functional feature of the roof mechanism, as a dead center position defines a motion break of the roof at a certain point on its way from the opened position to the closed position, and thereby defines the pre-closure position. The motion dead point of the roof prevents the operator of the vehicle from banging on the roof to move the roof into the catching position on the windshield frame, and possibly damaging the latching mechanism. Instead, regardless of how forcefully the operator manually moves the roof toward the body frame part, the roof stops in the dead center position at the pre-closure position, as defined and determined by the linkage construction. Then, when further force is applied to the roof by the operator when the pre-closure position that is at the dead center position, the roof can be moved from this pre-closure position, into the catching position.

The Applicants respectfully assert that currently amended claims 1 and 11 contain subject matter which is described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Therefore, for at least this reason, the Applicants respectfully assert that the 35 USC §112, first paragraph rejection of claims 1 and 11, as amended herein, are overcome and should be withdrawn. Additionally, the rejections of claims 2-7, 9, and 12, which depend from claim 1, should also be withdrawn for at least the same reason.

Claims 1-7, 9, 11-12 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the examiner states that “‘dead center on the body frame’ is vague and not understood.” The examiner further states that “determination of potential infringement is uncertain.” The Applicants respectfully disagree.

MPEP 2173.02 states, “Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.”

As recited and discussed above, the Applicants have amended claims 1 and 11. As also discussed, the terminology “dead center” is a recognized and understood term of art. Therefore, the Applicants respectfully disagree with the examiner as to the uncertainty of determining potential infringement. Paragraph [0035] states that “[i]n the pre-closure position, the roof peak or convertible-top front edge 5 is raised at a specified spacing with respect to the rear edge of the windshield frame 4.” As discussed in paragraph [0036], “[i]f the convertible top 1 is to be fully closed and attached, the convertible top 1, with the front edge 5, is guided manually, for example, overcoming a dead center on the windshield frame 4, until the catching position is assumed.”

For at least these reasons, the Applicants respectfully assert that the 35 USC §112, second paragraph rejection of claims 1 and 11, as currently amended herein, is overcome and should be withdrawn. Additionally, the 35 USC §112, second paragraph rejection of claims 2-7, 9, and 12, which depend from claim 1, should also be withdrawn for at least the same reasons.

Claim Rejections – 35 USC §103:

Claims 1-7, 9, 11, and 12 are rejected under 35 USC §103(a) as being unpatentable over Mertin et al. in view of Nagai et al. and either Prenger et al. or Kaltz et al.

With respect to claims 1 and 11, the Examiner states that “Mertin et al. teach[es] a power operated latching device for a convertible at a windshield header, col. 3, line 7, using a hydraulic motor.” The Examiner also states that “Nagai et al. teach[es] that a power operated latch for a manually driven vehicle lid comprises closure elements 6 and 8, motor drive unit “M” for the latch, wherein the lid is manually driven to a pre-closure position, and a catching position, figure 3, ‘in which the convertible top is closable, automatically’ and wherein the device includes a sensor 35a, figure 5 and a control unit 47 to activate the element 8.” The Examiner further states that “[b]oth Prenger et al. or Kaltz et al. teach that a convertible top

frame may have a handle shape in order to grasp same” and that “[i]t would have been obvious to one of ordinary skill to provide in Mertin et al. an electric power operated latch as taught by Nagai et al. and structure the convertible top as taught by either Prenger et al. or Kaltz et al. to enable manual grasping.”

The Applicants respectfully disagree. The Examiner has not conducted the required Graham factual inquiries, as least as far as (A) determining the scope and content of the prior art and (B) ascertaining the differences therebetween. When evaluating claims for obviousness under 35 USC 103, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP 2143.03. (Emphasis added). Specific instances will now be discussed with reference to the rejected claims.

Claim 1, as amended, recites that “the convertible top (1) is movable manually from a pre-closure position, at a spacing from the body frame part (4), to **overcome a dead center** in the convertible top’s (1) motion toward the body frame part (4), until a catching position is achieved, which activates an automatic latching of the convertible top.” (Emphasis added). Claim 11, as amended, recites that “wherein the convertible top has a handle element, by which the convertible top is movable manually between a pre-closure position spaced from the body-frame part, **overcoming a dead center** of the convertible top’s motion toward the body-frame part (4), until a catching position is achieved, which activates an automatic latching of the convertible top.” Support for these amendments can at least be found in paragraph [0036] of the application. As amended, claims 1 and 11 require that the convertible top (1) be moved by manual force from the pre-closure position to **overcome a dead center position** in the motion of the convertible top toward the body-frame part (4) *until* a catching position is achieved. As discussed previously, a dead center position is a stopping position resulting from the geometrical linkage configuration of the convertible top. Providing a defined stopping position via the dead center, at a spacing from the body frame part would prevent the motor from banging the roof into the body frame part and damaging the latching mechanism. The manual movement to overcome the dead center until the latching position is achieved would be less forceful than if the motor were used.

Instead, Mertin et al. *only* teaches a “power-assisted lock...used for closing soft convertible tops against the frame of the windshield...” See col. 3, line 7-8. Mertin et al. fails to teach a convertible top having a handle element, by which the convertible top is

movable *manually* from a pre-closure position, at a spacing from the body-frame part, to *overcome a dead center* on the body frame part, until a catching position is achieved, which activates an automatic latching of the convertible top, as required by claims 1 and 11. Mertin et al. also fails to teach that the closure device includes a sensor that detects assumption of the catching position of the convertible top and sends signals to a control unit of the drive unit, where the control unit, based on the signal of sensor, actuates a drive unit to activate at least one closure element or mating closure element to attach the convertible top, as required by claims 1 and 11. More specifically, not only does Mertin et al. fail to teach how the convertible top is moved into the position where the power-assisted lock is activated, but Mertin et al. fails to disclose manually moving a convertible top to **overcome dead center** until a catching position is reached, as required by claims 1 and 11.

Nagai et al. *only* teaches a power operated latch for a trunk lid where “[w]hen the trunk lid is closed, the lowering thereof to its closed position is electrically detected by a trunk lid sensor and, in response to it an electrical driving device including an electric motor, is operated...[to move] to a locking position.” See Abstract. Nagai et al. fails to teach a convertible top having a handle element, by which the convertible top is movable *manually* from a pre-closure position, at a spacing from a body-frame part, to *overcome a dead center* of the body-frame part, until a catching position is achieved, which activates an automatic latching of the convertible top, as required by claims 1 and 11. Therefore, not only does Nagai et al. fail to teach a handle element and a convertible top, but Nagai et al. also fails to disclose manually moving a convertible top to **overcome dead center** until a catching position is reached, as required by claims 1 and 11.

Therefore, the requirement of manually moving the convertible top, via a handle element, from a pre-closure position, to **overcome dead center** of the body-frame part, **until** a catching position is achieved and that, in turn, activates a closure element, is not expressly or inherently disclosed by Mertin et al. or Nagai et al.

While Prenger et al. and Kaltz et al. each disclose a handle element for manually moving a convertible top, each of these references also fails to remedy the deficiencies of Mertin et al. and Nagai et al.

Additionally, in making the determination of obviousness, the Examiner has failed to address all words in the claims, namely "dead center", as recited by claims 1 and 11. Therefore, the rejection of claims 1 and 11 are overcome and are allowable for at least these reasons. Also, claims 2-7, 9, and 2, which depend from allowable claim 1, are allowable for at least the same reasons that claim 1 is allowable.

Conclusion

It is therefore respectfully submitted that all claims are in condition for allowance, which action is requested.

Respectfully submitted,

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